

Letter to the Editor

Old Approaches to International Law*

Anthony D'Amato**

I read with interest David Kennedy's and Chris Tennant's account of the three-day retreat in Essex that featured a number of scholars who are blazing new approaches to international law.¹ I would have liked to have been there so that I could have joined in the participants' conclusion that their conference was a great success. However, by virtue of a slight twist in the long arm of coincidence, I was at the time serving at a similar conference in nearby Sussex.

At our retreat, participants were recruited on the basis of whether they regarded themselves as rethinking the traditional views of international law. Each participant executed an affidavit affirming that he or she was engaged in challenging the dominant intellectual style or assumptions of our field. Now that the pages of the *Harvard International Law Journal* are available for non-articles,² I have asked for equal time to memorialize the fact that our conference, too, was a success.

An apparent difference between our conference and the one at Essex was that we focused on old approaches to international law instead of new ones. Yet it soon emerged during our conference that every participant's work was an amalgam of old and new approaches. By the time the retreat was over and we bade a fond farewell to Sussex, the distinction between old and new had disappeared entirely. However, this may have been due to the fact that our gathering may not have been truly representative of mainstream international law scholarship.

I asked the participants to write a paragraph or two about their experience of the conference. I did not receive replies from all the people I contacted in time for inclusion here. Some expressed their

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1. David Kennedy & Chris Tennant, *New Approaches to International Law: A Bibliography*, 35 HARV. INT'L L.J. 417 (1994).

2. Curiously, this journal lists the Kennedy-Tennant piece under "Articles"!

reluctance to write, but I managed to convince them by pointing out that if they even wrote one small paragraph they could list it as a publication on their curriculum vitas. Their comments appear here unedited.

PERSPECTIVES ON SUSSEX

Samuel Pufendorf

The conference was great fun, but it would have been even better if I had not been denied an opportunity to solve a problem that was plaguing Jerry Bentham. At dinner, he essayed the view that positivism and natural law were incompatible. I said, "No problem. They may work opposite sides of the street, but the street itself doesn't change direction." He replied, "That's a fascinating theory, Sammy, but I don't get it." I started to explain, but at that moment boisterous old Rick Vattel knocked over Jerry's glass of Madeira and it spilled all over the table. By the time Tony D'Amato, the busboy, finished cleaning it up, Jerry had forgotten the question, and the moment was lost forever.

Hans Kelsen

The conference was excellent except that people like Sammy were jiving too much over natural law. They should get with the positivist rap. It's smoking, man.

Francisco Suarez

Many found their voice in this retreat, and cries of "Ridi, Pagliacci!" reverberated through the forest. My only criticism of the conference, aside from the fact that good tenors are in short supply, is that insufficient attention was paid to radical semiotics, which you know was a subject pioneered many years ago by the Jesuits.³

Francisco de Vitoria

Semiotics is okay in its place, but it's just one pathway, like any other methodology. Why not also revive functionalism, structuralism, foundationalism, liberalism, cosmopolitanism, nationalism, realism, feminism, and masculinism? Folks need to use the pathways to international law that they know best, even if the particular pathway they choose leads elsewhere.

Cornelius Bynkershoek

Despite the overall success of the conference, I grew tired of hearing the two Frankies—Suarez and Vitoria—carry on about the worn-out

3. See especially BLAISE PASCAL, *LETTRES PROVINCIALES* (1656), but take it with a grain of salt.

tools in their pre-modernist backpacks. Even though Plato used every one of those methodologies, they are insufficiently old. I told the conference that if we want to exhume a really old approach to international law, we should go back to the Mind of God as the only defensible source of international norms.

Christian Wolff

The conference was a rousing success, so let me take this opportunity to answer Corny's suggestion about the Mind of God, which I did not have a chance to do during the retreat itself because we didn't share the same hot tub. Corny, there's nothing "old" about the Mind of God as a source of international law. Post-Reformation eschatology as well as reborn Christians throughout continental Europe are flocking to the Mind of God. It's the newest methodology in our field, and therefore has no place in a conference dedicated to old approaches.

Marjorie Whiteman

I'm all for the Mind of God, but only as chiefly applied by the United States of America.

Louis Sohn

I think the success of our conference would be permanently assured if we resolve our dispute about the Mind of God. Chris Wolff has a point that it's a "new approach," but on the other hand, it's also an "old approach," maybe even the oldest of all. As Marge Whiteman points out, it goes all the way back to the decisions of Chief Justice Marshall. Why don't we just compromise and say that the Mind of God is both an old and a new source of international law?

Louis Henkin

I have half a mind to accept Louie's suggestion and half a mind to reject it. Maybe he's saying that fifty percent of God's Mind is an old approach, and fifty percent is a new approach; frankly, I never know what he's saying. In my own view, which as you all know is reasonable by definition, half of the Mind of God is accepted by half of the states in the world in half of their interactions half of the time.

Hugo Grotius

The reason our conference was a success was that we didn't try to do things by halves. I've always believed in a holistic approach to international law, because the holistic approach is the oldest approach and also, not to put too fine a point on it, the holiest approach.

John Selden

I've always felt there were holes in Hugo's theories, and now he's confirmed it.

Attila the Hun

The conference would have been even more of a success had it not restricted itself to the law of "civilized nations." It's a bit arrogant to assume that Western Judeo-Christian states include all the relevant ethnicities. Although I was the only outsider at the conference, my distinguished confreres appeared to perk up at my suggestion that a truly "old" approach to international law would require its extension to pre-civilized nations. If the laws of war, to pick one example, had been thus extended, I might not today be saddled with such a bad rep.

Richard Baxter

Although the conference was viewed as a notable success, insufficient attention may have been accorded gender neutrality in international law. In consequence, an observation was duly rendered by the present author to the effect that every boat, every barge, every ship, and every scow on the high seas is feminine. Since so much of the subject matter of international law is preoccupied with oceanic affairs, it was noted by the same speaker that high time may have occurred for international law to desist marginalizing the principle of gender neutrality in respect of vessels. In future, sentences would be well advised to have themselves be composed in format similar to, though not necessarily as vivid as, the following: "As the S.S. *Lotus* steamed toward Turkish waters, his/her lieutenant of the watch was sleeping off a few stiff ones on his/her gangway."

Carlos Calvo

I came to the conference as a liberated, white, male, heterosexual Argentinian theorist, and was not entirely disappointed. In our final evening together, Chuck DeVisscher offered a toast "To France and her eternal glory!" I glanced at Baxter and he glanced back at me. It had somehow slipped our minds that nations are feminine! No wonder that old rogue Oppenheim thinks that states have personality. I rose to make a corrective toast: "To Portugal and his former glory." People looked confused, and Alona Evans whispered in my ear, "You mean Max Portugal, the former lightweight champ?"

BIBLIOGRAPHY

Every non-article must have a bibliography, and this non-article is no exception. [To the Printer: Please list here the publications of the persons who attended the Sussex conference, space permitting.]